

Exhibit A to Comments of Duke Energy Gas Transmission Corporation et al. on Proposed Rules

980 CMR 15.00: PETITIONS TO CONSTRUCT NATURAL GAS PIPELINE FACILITIES

Section

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15.01: Purpose and Scope

(1) Purpose. 980 CMR 15.00 sets forth procedures governing the filing and the review by the Energy Facilities Siting Board of an application to construct a gas pipeline. Requirements set forth in this chapter supersede any provisions contained in 980 CMR 5.00, 7.00, and 9.00 that relate to proposals to construct gas pipeline facilities.

(2) Scope. An application must be filed under 980 CMR 15.00 whenever any person proposes to construct a gas transmission pipeline with a normal operating pressure in excess of 100 psig, when the total length of new gas pipeline will exceed one mile.

(a) Pipeline Segmentation. For purposes of determining jurisdiction, any adjacent lengths of gas pipeline constructed within the five preceding years shall be included when calculating the total length of new gas pipeline. However, lengths of pipeline that have previously been granted written approval by the Siting Board shall not be included in the total length of new gas pipeline.

(b) Replacement Pipe. Notwithstanding 980 CMR 15.01(2)(a), above, any lengths of restructured, rebuilt, or relaid pipe that are of the same nominal diameter and design pressure and are also within the same right-of-way as the replaced pipe shall be subtracted when calculating the total length of new gas pipeline, for purposes of determining jurisdiction.

(3) Exclusions.

(a) Construction of any interstate pipeline that requires or has been issued a Certificate of Public Convenience and Necessity under § 7(c) of the Natural Gas Act does not constitute construction of a pipeline for transmission of gas subject to 980 CMR 15.00. Persons proposing to construct any pipeline for transmission of gas excluded from Siting Board review by 980 CMR 15.01(3)(a) must comply with the requirements of 980 CMR 17.00, to the extent those requirements may be applicable.

(b) Commencement of permanent placement of facilities on an emergency basis subject to compliance with the provisions of 980 CMR 6.06(2) does not constitute construction of a pipeline for transmission of gas subject to 980 CMR 15.00.

(4) Application of 980 CMR 1.00. 980 CMR 1.00 shall apply to proceedings initiated pursuant to 980 CMR 15.00, except to the extent that 980 CMR 1.00 and 980 CMR 15.00 are in conflict. In the event of a conflict, 980 CMR 15.00 shall prevail over 980 CMR 1.00.

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(5) Waiver of Rules. Where good cause appears, not contrary to statute, the Board or Presiding Officer may permit deviation from the rules in 980 CMR 15.00.

15.02: Definitions.

For the purposes of 980 CMR 15.00, the definitions set forth in 980 CMR 1.03 shall apply unless the context or subject matter requires a different interpretation. The following definitions also shall apply to this section:

Certificate of Public Convenience and Necessity under § 7(c) of the Natural Gas Act includes a Section 7(c) CPCN and a Section 7(c) Blanket Certificate as those terms are defined in 980 CMR 17.02 and any project that is automatically authorized by FERC under 18 CFR § 2.55 or pursuant to final FERC regulations issued in Docket No. RM03-4-000 (Emergency Reconstruction of Interstate Natural Gas Facilities under the Natural Gas Act).

Coastal Zone means the geographic area described in 301 CMR 21.05, used to establish the area of jurisdiction for the Coastal Zone Management Program Federal Consistency Review Procedures (301 CMR 21.00), pursuant to G.L. c. 21A, §§ 2, 4A.

Department means the Massachusetts Department of Telecommunications and Energy.

Design pressure means design pressure of a pipe as defined in 49 CFR Part 192 (Subpart C).

FERC has the same meaning in these regulations as it has in 980 CMR 17.02.

Gas means natural gas or any direct substitute. Gas includes natural gas, propane air, synthetic natural gas, and liquified natural gas.

Interstate Pipeline means a pipeline that is used in the transmission of natural gas in interstate commerce, and shall not include in-state transmission of gas such as intrastate pipelines, Hinshaw Amendment pipelines, or other means of intrastate distribution.

Long-Range Forecast means a long-range forecast filed with the Department of Telecommunications and Energy pursuant to G.L. c. 164, § 691.

MAOP means maximum allowable operating pressure, which is the maximum pressure at which a pipeline or segment of a pipeline may be operated under 49 CFR Part 192.

Natural Gas Act means Natural Gas Act, 15 U.S.C. § 717 *et seq.*

Normal operating pressure means the maximum pressure that would be expected in the pipeline based on the configuration of compressors and pressure regulators. Any pipeline with an MAOP in excess of 150 psig will be treated as having a normal operating pressure in excess of 100 psig.

Preferred Route means the gas pipeline route and any route variations proposed by the Applicant for approval by the Board.

psig means pounds per square inch gauge.

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Route alternative means a gas pipeline route and any route variations proposed for approval in the alternative to the preferred route.

Route segment means a discrete portion of a pipeline route.

Route variation means a route segment, generally short in distance, which could substitute for some portion of a preferred route or route alternative in the event that construction along that portion of the preferred route or route alternative proves infeasible.

15.03: Application for Siting Board Approval to Construct a Gas Pipeline

(1) Contents of Petition. An application for approval to construct a gas pipeline shall include a written petition which (1) sets forth the need for the pipeline project, (2) compares the pipeline project to other alternatives, and (3) analyzes the pipeline project's cost, environmental impacts, and effects on the reliability of the gas supply system, as specified below. The petition shall describe the pipeline project in its entirety, including any intervening replacement sections.

(a) Project Description. The petition shall contain a description of the pipeline project, specifying:

- (i) the total length of new and replacement pipeline, pipeline diameter and intended MAOP; the location of the proposed route and any route variations for which the Applicant seeks approval; the types and locations of structures to be constructed above and below the ground; the width of permanent right-of-way; and depth of installation;
- (ii) the existing gas supply system in the area, including interstate and intrastate pipelines, laterals, pressure regulation equipment, and locations of significant gas demand; and
- (iii) proposed construction methods, access and construction rights-of-way, and predicted dates of construction.

(b) Need. The petition shall document the need for the pipeline project.

- (i) A pipeline project may be proposed to meet a reliability-based need (for example, to maintain or increase the reliability of gas service or to connect new customers), an economic efficiency-based need (for example, to reduce the cost of energy or to increase competition between gas suppliers), or an environmental need (for example, to reduce the level of environmental impacts associated with meeting certain energy requirements). A pipeline project may be proposed to serve needs within Massachusetts, or outside of Massachusetts, or both within and outside of Massachusetts.
- (ii) If the project is proposed to meet a reliability-based need, the petition shall include: (i) an analysis of existing and projected gas requirements for the area to be served by the pipeline project; (ii) an analysis of existing and planned resources available to meet those requirements; and (iii) an analysis of service deficiencies that require additional gas supply resources or an analysis of the reliability benefits of the pipeline project. The petition shall describe in reasonable detail the methods and assumptions used in each analysis.
- (iii) If the project is proposed to meet an economic efficiency-based or environmental need, the petition shall include quantitative analyses of the economic or environmental benefits of the

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project. The petition shall describe in reasonable detail the methods and assumptions used in each analysis.

(iv) The petition shall describe any secondary benefits claimed for the proposed pipeline, shall provide analyses documenting such benefits, and shall describe in reasonable detail the methods and assumptions used in each analysis.

- (c) Alternative Approaches. The petition shall describe all reasonably practicable means of meeting the need identified in 980 CMR 15.03(1)(b), above. These alternative approaches may include, without limitation: upgrades to existing facilities; enhancement of local or regional gas storage capacity; interconnection to a different source of gas; interconnection at a different location; pipeline development by a different person; and reduction of gas requirements through the use of demand-side management. The petition shall compare the environmental impacts, capital and operating costs, and effects on the reliability of the gas delivery system associated with each of the alternative approaches, and shall state the Applicant's reasons for pursuing the pipeline project rather than one of the alternative approaches.
- (d) Route Selection Process. The petition shall contain a description of the process by which the proposed route for the pipeline was selected. Specifically, the petition shall:
 - (i) describe how the Applicant identified potential routes or route segments for the pipeline project;
 - (ii) list the potential routes or route segments that were identified; and
 - (iii) present the environmental, economic, reliability, and other criteria used to evaluate the potential routes and describe how these criteria were applied, weighted and combined.
- (e) Preferred Route and Route Alternatives.
 - (i) The petition shall indicate which route or combination of route segments identified in 980 CMR 15.03(1)(d), above, is the Applicant's preferred route for the pipeline project.
 - (ii) The petition shall identify any other routes or combinations of route segments identified in either 980 CMR 15.03(1)(c) or (d), above, that the Applicant intends to pursue as route alternatives. The petition shall present at least one route alternative that is geographically distinct from the preferred route. A waiver of this requirement pursuant to 980 CMR 15.01(5) may be sought if the Applicant can demonstrate that there are no feasible pipeline routes that are geographically distinct from the preferred route.
- (f) Environmental Analysis. The petition shall include an analysis of the likely environmental impacts of the pipeline project. Specifically, the petition shall:
 - (i) describe the existing uses and natural resource characteristics of the land along the preferred route, including: types and densities of development; agricultural and other open space uses; parks and recreation areas; areas designated for protection of their natural, archaeologic, historic, or scenic value; utility and transportation corridors; types of disturbed and undisturbed habitat; actual and potential use by typical and rare wildlife species; and zoning;
 - (ii) describe the temporary environmental impacts from project construction and the proposed mitigation of such impacts including, as applicable: land use impacts,

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including effects on agricultural and forest resources, upland habitats, and changes to views; water resource impacts, including effects on rivers, streams, wetlands and other natural habitats and on water quality; noise impacts; air quality impacts; solid waste impacts; traffic impacts; and standard procedures for environmental impact mitigation and the handling of hazardous materials during construction;

(iii) describe the long-term environment impacts from the project and mitigation of such impacts including, as applicable: land use impacts, including effects on land use and on natural features and natural habitats and changes to views; water resource impacts, including effects on rivers, streams, wetlands and other natural habitats and on water quality; noise impacts; air quality impacts; and solid waste impacts; and

(iv) compare the environmental impacts of the route alternatives listed in 980 CMR 15.03(1)(e), above.

(g) Economic Analysis.

(i) The petition shall compare the capital and operating costs of the route alternatives listed in 980 CMR 15.03(1)(e), above. The petition shall list costs by major categories such as design and engineering costs, permitting costs, land acquisition costs, cost of labor, cost of materials, and pipeline and right-of-way maintenance costs.

(ii) If the project is proposed to meet an economic efficiency-based need, or if it would provide economic efficiency-related benefits if located along either the preferred or an alternative route, the petition also shall compare economic benefits of the project as built along the preferred route and the route alternatives. The petition shall describe in reasonable detail the methods and assumptions used in this analysis.

(h) Reliability Analysis. The petition shall compare the route alternatives listed in 980 CMR 15.03(1)(e), above, with respect to their effects on the reliability of the gas supply system. The petition shall include an analysis of the extent to which each route alternative would maintain or enhance deliverability of gas at an adequate pressure and volume to customers affected by the pipeline project, and shall specify the approximate number of years for which adequate service would be provided under each alternative.

(i) Maps. The petition shall include:

(i) a single map showing the proposed route and the route alternatives;

(ii) one or more maps based on United States Geological Survey

topographic maps of 1:24,000 or 1:25,000 scale, showing the proposed

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pipeline route and any route variations, the route alternatives listed in 980 CMR 15.03(1)(e), above, and the locations of related facilities; and (iii) aerial photographs at a scale of approximately 1:2400, marked to show proposed pipeline alignment, location of related facilities, land ownership, rights-of-way, and any proposed construction access roads.

(j) Figures. The petition shall include figures or diagrams showing typical right-of-way and workspace configurations using cross-sectional or other views, and plans for waterway and road crossings.

(k) Required Permits. The petition shall contain a list of the local, state, and federal permits required to construct and operate the pipeline project.

(2) Long-Range Forecast. If the Applicant is required to file a long-range forecast pursuant to G.L. c. 164, § 691, the application shall include a copy of the Applicant's most recently approved long-range forecast and an analysis demonstrating that the pipeline project is consistent with that long-range forecast.

(3) MEPA Filings. If the pipeline project requires the filing of an Environmental Notification Form pursuant to 301 CMR 11.00, the application shall include a copy of the Environmental Notification Form and the resulting Certificate from the Secretary of Environmental Affairs. If additional filings have been made regarding the project pursuant to 301 CMR 11.00, a copy of these additional filings and any resulting Certificates from the Secretary of Environmental Affairs shall be included in the application.

(4) Coastal Zone Alternatives. If the preferred route is located in or passes through a Coastal Zone, the Applicant shall consult with the Office of Coastal Zone Management within the Executive Office of Environmental Affairs to determine whether it must present an inland alternative to the preferred route. If an inland alternative is required, this alternative shall be presented as a route alternative pursuant to 980 CMR 15.03(1)(e) (ii). If an inland alternative is not required, the petition shall be accompanied by a letter from the Office of Coastal Zone Management attesting to this determination.

(5) Draft Notice. An application for approval to construct a gas pipeline shall include a draft notice of adjudication that complies with the requirements set forth in 980 CMR §§ 1.04(3) *et seq.* The draft notice shall contain a description of the preferred route and any route alternatives identified in 980 CMR 15.03(1)(e), specifying for each route the total length of pipeline to be constructed, the location of route, pipeline diameter, proposed MAOP, types and locations of related structures above and below the ground, and route variations. The draft notice shall be provided both in writing and electronically.

(6) Joint Filing of Related Matters.

(a) Related Siting Board Matters. An Applicant may file a petition to construct a generating facility or any other related matter within the Board's jurisdiction in conjunction with an application to construct a gas pipeline. These petitions shall be assigned separate docket numbers, but may be the subject of a joint notice, may be the subject of consolidated public and evidentiary hearings, and may be addressed in a consolidated decision by the Board.

(b) Related Department Matters.

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An Applicant may file, in conjunction with a petition to construct a gas pipeline, a petition with the Department for approval of along-range forecast pursuant to G.L. c. 164, § 691, a petition for a zoning exemption pursuant to G.L. c. 40A, § 3, or a petition for any other related matter within the Department's jurisdiction, with a request that the matter be referred to the Board and consolidated with the petition to construct a gas pipeline facility. This request may be granted at the discretion of the Chairman of the Department. If this request is granted, the Chairman of the Department shall issue a ruling stating that he has referred the matter to the Board pursuant to G.L. c. 25, § 4, for consolidation with the Board matter. The consolidated petitions may be the subject of a joint notice, may be the subject of consolidated public and evidentiary hearings, and may be addressed in a consolidated decision by the Board.

(7) Filing Fees.

(a) Applicability Filing fees are assessed whenever an Applicant is not a utility subject to the jurisdiction of the Department that is assessed annually for the expenses of the Department.

(b) Fee Levels. Fees are assessed based on the length of the preferred route, according to the schedule below. Where a conflict exists, the lower fee shall apply.

(i) For a gas pipeline that is less than two miles in length, the filing fee shall be \$40,000.

(ii) For a gas pipeline that is more than two miles in length but less than five miles in length, the filing fee shall be \$60,000.

(iii) For a gas pipeline that is more than five miles in length, the filing fee shall be \$75,000.

(iv) For an application to construct a gas pipeline of any length that is filed in conjunction with an application to construct a generating facility, the filing fee shall be \$25,000.

(c) Fee Payment. Payment of the filing fee is due at the time the Application to Construct is filed with the Board. The filing fee shall be made by certified check payable to the Commonwealth of Massachusetts.

15.04: Procedures.

(1) Notice Requirements.

(a) The applicant shall provide notice of adjudication by first class mail in accordance with the requirements of 980 CMR 1.03(4).

(b) In addition, the applicant shall send a copy of the notice via first class mail to all abutters and abutters within 300 feet of the preferred route and route alternatives identified in 980 CMR 15.03(1)(e), or as the Presiding Officer may otherwise provide.

(c) The applicant shall place a copy of the petition to construct on file in the Town or City Hall and the main public library of each Massachusetts municipality through which the preferred route or any route alternative identified in 980 CMR 15.03(1)(e) passes. (d) Notice may be supplemented during the course of the proceeding, as the Presiding Officer may provide.

(2) Public Comment Hearings. As soon as practicable after the filing of a petition to construct a gas pipeline, the Board shall hold a public comment hearing in at least one of the municipalities through which the preferred route passes. In accordance with 980 CMR 1.04(5), public comment hearings are conducted to afford members of the general public an opportunity to comment on

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a matter. Comments made at public comment hearings are not deemed to be evidence. Additional public comment hearings may be held at the discretion of the Presiding Officer.

(3) Evidentiary Hearings. The Board shall commence evidentiary hearings within six months of the filing of a petition to construct a gas pipeline. Evidentiary hearings shall be conducted in accordance with 980 CMR § § 1.06 et seq.

(4) Decisions.

(a) Within twelve months of the filing of a petition to construct a gas pipeline, the Board shall issue a decision approving the petition, approving the petition with conditions, or rejecting the petition. The Board may approve the construction of the pipeline along the preferred route, along any route alternative included in the notice of adjudication, or along any combination of route segments included in the notice of adjudication; however, the Board may not approve the construction of the pipeline along any route or route segment that has not been included in a notice of adjudication.

(b) The Board's decision shall be in writing, and shall set forth all necessary determinations of fact or law, including findings with respect to:

- (i) the need for or benefits to be provided by the pipeline project; the relative merits of alternative approaches to serving the need or achieving the benefits for which the pipeline is proposed, in terms of cost, reliability, and environmental impact;
- (ii) the relative merits of alternative approaches to serving the need or achieving the benefits for which the pipeline is proposed, in terms of cost, reliability, and environmental impact;
- (iii) whether the preferred route for the pipeline project is superior to route alternatives in terms of cost, reliability, and environmental impact;
- (iv) whether the pipeline project is consistent with current Massachusetts health, environmental protection, and resource use and development policies; and
- (v) whether the pipeline project is consistent with the Board's mandate to provide a reliable energy supply for Massachusetts with a minimum impact on the environment at the lowest possible cost.

(c) If the applicant is required to file a long-range forecast pursuant to G.L. c. 164, § 69I, the decision also shall include the Board's determination as to whether the pipeline project is consistent with the most recently approved long-range forecast.

REGULATORY AUTHORITY

M.G.L. c. 164, §§ 69H, 69J, and 69J.

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980 CMR 15.00 Final Change